

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL J MCCULLOUGH
Claimant

APPEAL 20A-DUA-00294-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/29/20
Claimant: Appellant (2)

PL 116-136 Section 2101 – Pandemic Unemployment Assistance
20 CFR § 625 – Disaster Unemployment Assistance
Iowa Code § 96.4(4) – Determination of Benefits

STATEMENT OF THE CASE:

On September 3, 2020, the claimant filed an appeal from the August 25, 2020 Assessment for Pandemic Unemployment Assistance (“PUA”) benefits decision that found he was not eligible for PUA benefits. After due notice was issued, a telephone hearing was held on October 14, 2020. Claimant participated personally. Matthew Kumley participated as a witness for the claimant. Claimant’s Exhibit A was admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

ISSUE:

Is the claimant eligible for PUA benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed his initial claim for regular unemployment insurance benefits funded through the State of Iowa with an effective date of March 29, 2020. Claimant did not have sufficient qualified earnings in the base period in which to become monetarily eligible for unemployment insurance benefits funded by the State of Iowa. Claimant filed an application for PUA benefits on July 20, 2020.

For the past 40 years the claimant has been a self-employed musician. Beginning November of 2019, he established a regular weekly performance at The Glass Tap. This paid him \$200.00 per week. See Exhibit A.

On or about March 17, 2020, The Glass Tap was ordered to be closed due to an order issued by the Governor of the State of Iowa in response to the COVID 19 public health emergency. Claimant worked at other venues but the majority of his income came from his performances at The Glass Tap.

From March 17, 2020 through April 2, 2020, the claimant was totally unemployed. On April 3, 2020, the claimant participated in an event for The Glass Tap where he earned \$100.00.

Claimant remained totally unemployed from April 4, 2020 through September 19, 2020. On September 20, 2020, he participated in a performance for The General Store, earning \$200.00.

Claimant was totally unemployed from September 21, 2020 through the week of September 26, 2020, as he had no performances due to the COVID 19 pandemic.

The week beginning September 27, 2020, he participated in a performance earning \$150.00.

Claimant has been totally unemployed beginning the week of October 4, 2020 through October 14, 2020, as The Glass Tap remains closed and the claimant has had no other performances. Claimant has not received any paid sick leave or other leave pay under the CARES Act. The claimant is not able to regularly telework with pay.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 96.4(4)a provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

4. a. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this paragraph in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

Claimant's initial claim for benefits was effective May 3, 2020. Claimant was not monetarily eligible for regular unemployment insurance benefits funded by the State of Iowa because he lacked qualified earnings in his base period.

The CARES Act was established to provide PUA benefits to qualified individuals who were not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation. However, the claimant must be a "covered individual" under the Act. PL 116-136 Section 2102(a), (b), (c), and (h) provide as follows:

SEC. 2102. PANDEMIC UNEMPLOYMENT ASSISTANCE.

(a) DEFINITIONS. — In this section:

(3) COVERED INDIVIDUAL. — The term “covered individual”—

(A) means an individual who—

(i) is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107; **and**

(ii) provides self-certification that the individual— (I) is otherwise able to work and available for work within the meaning of applicable State law, except the individual is unemployed, partially unemployed, or unable or unavailable to work **because—**

(aa) the individual has been diagnosed with COVID–19 or is experiencing symptoms of COVID–19 and seeking a medical diagnosis;

(bb) a member of the individual’s household has been diagnosed with COVID–19;

(cc) the individual is providing care for a family member or a member of the individual’s household who has been diagnosed with COVID–19;

(dd) a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID–19 public health emergency and such school or facility care is required for the individual to work;

(ee) the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID–19 public health emergency;

(ff) the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID–19;

(gg) the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID–19 public health emergency;

(hh) the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID–19;

(ii) the individual has to quit his or her job as a direct result of COVID–19;

(jj) the individual’s place of employment is closed as a direct result of the COVID– 19 public health emergency; or

(kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section; or

(II) is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107 and meets the requirements of subclause (I); and

(B) does not include—

(i) an individual who has the ability to telework with pay; or

(ii) an individual who is receiving paid sick leave or other paid leave benefits, regardless of whether the individual meets a qualification described in items (aa) through (kk) of subparagraph (A)(i)(I).

(emphasis added).

(b) ASSISTANCE FOR UNEMPLOYMENT AS A RESULT OF COVID– 19. —

Subject to subsection (c), the Secretary shall provide to any covered individual unemployment benefit assistance while such individual is unemployed, partially unemployed, or unable to work for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation (as that term is defined in section 85(b) of title 26, United States Code) or waiting period credit.

(c) APPLICABILITY. —

(1) IN GENERAL. — Except as provided in paragraph (2), the assistance authorized under subsection (b) shall be available to a covered individual — (A) for weeks of unemployment, partial unemployment, or inability to work caused by COVID–19— (i) beginning on or after January 27, 2020; and (ii) ending on or before December 31, 2020; and (B) subject to subparagraph (A)(ii), as long as the covered individual's unemployment, partial unemployment, or inability to work caused by COVID–19 continues.

(2) LIMITATION ON DURATION OF ASSISTANCE.—The total number of weeks for which a covered individual may receive assistance under this section shall not exceed 39 weeks and such total shall include any week for which the covered individual received regular compensation or extended benefits under any Federal or State law, except that if after the date of enactment of this Act, the duration of extended benefits is extended, the 39-week period described in this paragraph shall be extended by the number of weeks that is equal to the number of weeks by which the extended benefits were extended.

(h) RELATIONSHIP BETWEEN PANDEMIC UNEMPLOYMENT ASSISTANCE AND DISASTER UNEMPLOYMENT ASSISTANCE. —

Except as otherwise provided in this section or to the extent there is a conflict between this section and section 625 of title 20, Code of Federal Regulations, such section 625 shall apply to this section as if— (1) the term “COVID–19 public health emergency” were substituted for the term “major disaster” each place it appears in such section 625; and (2) the term “pandemic” were substituted for the term “disaster” each place it appears in such section 625.

Disaster Unemployment Assistance was established for the payment of unemployment assistance to claimants whose unemployment is caused by a major disaster. 20 CFR § 625.1.

20 CFR § 625.4 provides in pertinent part:

Disaster Unemployment Assistance.

Eligibility requirements for Disaster Unemployment Assistance.

An individual shall be eligible to receive a payment of DUA with respect to a week of unemployment, in accordance with the provisions of the Act and this part if:

(g) The individual is able to work and available for work within the meaning of the applicable State law; Provided, that an individual shall be deemed to meet this requirement if any injury caused by the major disaster is the reason for inability to work or engage in self-employment; or, in the case of an unemployed self-employed individual, the individual performs service or activities which are solely for the purpose of enabling the individual to resume self-employment.

A self-employed individual is defined as an individual whose primary reliance for income is on the performance of services in the individual's own business, or on the individual's own farm. 20 CFR § 625.2(n). An unemployed self-employed individual is defined as an individual who was self-employed in or was to commence self-employment in the major disaster area at the time the major disaster began, and whose principal source of income and livelihood is dependent upon the individual's performance of service in self-employment, and whose unemployment is caused by a major disaster as provided in § 625.5(b). 20 CFR § 625.2(t).

With regards to an unemployed self-employed individual, 20 CFR § 625.5(b) provides that the unemployment of an unemployed self-employed individual is caused by a major disaster if –

- (1) The individual has a “week of unemployment” as defined in § 625.2(w)(2) following the “date the major disaster began” as defined in § 625.2(e), and such unemployment is a direct result of the major disaster, or
- (2) **The individual is unable to reach the place where services as a self-employed individual are performed, as a direct result of the major disaster,** or
- (3) **The individual was to commence regular services as a self-employed individual, but does not have a place or is unable to reach the place where the services as a self-employed individual were to be performed, as a direct result of the major disaster,** or
- (4) The individual cannot perform services as a self-employed individual because of an injury caused as a direct result of the major disaster.

Unemployment is a direct result of the major disaster as provided for in 20 CFR § 625.5(c), which provides:

For the purpose of paragraphs (a)(1) and (b)(1) of this section, a worker's or self-employed individual's unemployment is a direct result of the major disaster where the unemployment is an immediate result of the major disaster itself, and not the result of a longer chain of events precipitated or exacerbated by the disaster. Such an individual's unemployment is a direct result of the major disaster if the unemployment resulted from:

- (1) The physical damage or destruction of the place of employment;
- (2) The physical inaccessibility of the place of employment in the major disaster area **due to its closure by or at the request of the federal, state or local government,** in immediate response to the disaster; or
- (3) Lack of work, or loss of revenues, provided that, prior to the disaster, the employer, or the business in the case of a self-employed individual, received at least a majority of its revenue or income from an entity in the major disaster area that was either damaged or destroyed in the disaster, or an entity in the major disaster area closed by the federal, state or local government in immediate response to the disaster.

In this case, the claimant is not monetarily eligible for unemployment insurance benefits funded by the State of Iowa pursuant to Iowa Code § 96.4(4)a. This is due to a lack of being paid sufficient wages in insured work during the base period. Claimant therefore meets the requirements of PL 116-136 Section 2102(a)(3)(A)(i); however, he **must also** meet the requirements of PL 116-136 Section 2102(a)(3)(A)(ii) to qualify as a “covered individual” under the CARES Act.

PL 116-136 Section 2102(a)(3)(A)(ii)(I) establishes that the claimant must provide self-certification that he is otherwise able to work and available for work within the meaning of applicable State law, except that he is unemployed, partially unemployed, or unable or unavailable to work because of one of the enumerated reasons listed in (aa) through (II). These reasons can change from week to week, as is the case here.

In this case, the claimant experienced a significant diminution of work because of COVID 19. See Attachment 1 of UIPL No. 16-20, Change 2, Question 11, Page I-5. Beginning the benefit week of March 15, 2020 through the benefit week-ending March 28, 2020 the claimant was totally unemployed because the regular place where he was self-employed at The Glass Tap was ordered by the Governor of Iowa to be closed. **PUA benefits are allowed from March 15, 2020 through March 28, 2020 under PL 116-136 Section 2102(a)(3)(A)(ii)(kk).**

From the benefit week beginning March 29, 2020 and ending April 4, 2020, the claimant was partially unemployed because the physical structure where he was self-employed at The Glass Tap was ordered by the Governor of Iowa to be closed; however, he did work at one performance and earned \$100.00. **Partial PUA benefits are allowed from March 29, 2020 through April 4, 2020 under PL 116-136 Section 2102(a)(3)(A)(ii)(kk), and subject to a deduction of earnings that week of \$100.00.**

From the benefit week beginning April 5, 2020 through September 19, 2020 The Glass Tap remained closed and claimant had no other performances. **PUA benefits are allowed from benefit week beginning April 5, 2020 through benefit week-ending September 19, 2020 under PL 116-136 Section 2102(a)(3)(A)(ii)(kk).**

On September 20, 2020, the claimant performed services and earned \$200.00. As such, he was partially unemployed for the benefit week of September 20, 2020 through September 26, 2020. He did not work any other performances because The Glass Tap remained closed and he did not work at any other performances. **Partial PUA benefits are allowed from September 20, 2020 through September 26, 2020, and subject to a deduction of earnings that week of \$200.00.**

From the benefit week beginning September 27, 2020 through October 3, 2020 the claimant was partially unemployed, as he performed services and earned \$150.00. **Partial PUA benefits are allowed from September 27, 2020 through October 3, 2020, and subject to a deduction of earnings that week of \$150.00.**

Beginning October 4, 2020 and continuing, the claimant has been totally unemployed as The Glass Tap is still closed and the claimant has not performed any services as a self-employed individual due to the COVID 19 pandemic. As such, **PUA benefits are allowed beginning October 4, 2020 and continuing so long as the claimant remains unemployed and is otherwise eligible.**

DECISION:

The August 25, 2020 Assessment for Pandemic Unemployment Assistance Benefits decision denying PUA benefits is reversed.

PUA benefits are allowed from March 15, 2020 through March 28, 2020 under PL 116-136 Section 2102(a)(3)(A)(ii)(kk).

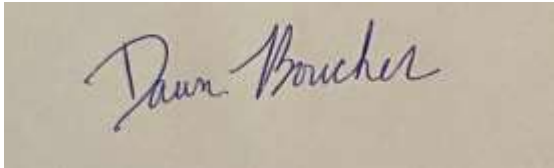
Partial PUA benefits are allowed from March 29, 2020 through April 4, 2020 under PL 116-136 Section 2102(a)(3)(A)(ii)(kk), and subject to a deduction of earnings that week of \$100.00.

PUA benefits are allowed from benefit week beginning April 5, 2020 through benefit week-ending September 19, 2020 under PL 116-136 Section 2102(a)(3)(A)(ii)(kk).

Partial PUA benefits are allowed from September 20, 2020 through September 26, 2020, and subject to a deduction of earnings that week of \$200.00.

Partial PUA benefits are allowed from September 27, 2020 through October 3, 2020, and subject to a deduction of earnings that week of \$150.00.

PUA benefits are allowed beginning October 4, 2020 and continuing so long as the claimant remains unemployed and is otherwise eligible.

A handwritten signature in blue ink that reads "Dawn Boucher". The signature is written in a cursive style and is positioned above a horizontal line.

Dawn Boucher
Administrative Law Judge

October 16, 2020
Decision Dated and Mailed

db/sam